IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R.No.3993 of 2000

Date of Decision : 18.10.2007

Municipal Council, Sangrur .....Petitioner

versus

Shivraj Rani .....Respondent

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

Present : Mr.C.M.Munjal, Advocate for the petitioner.
Mr.Ashok Singla, Advocate for the respondent.

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JUDGMENT

HEMANT GUPTA, J.

The challenge in the present revision petition is to the order passed by the learned Executing Court dated 14.8.2000, whereby an application filed by the petitioner for release of bank account from attachment was declined.

On 2.3.1998, the plaintiff's suit was decreed directing the Municipal Council to consider the case of the plaintiff for promotion as Clerk on the basis of seniority and eligibility with effect from the date when posts of Clerks under 10% quota had fallen vacant. The said decree was affirmed in appeal on 25.7.1998. Since the plaintiff's case was not considered for promotion, the Decree Holder moved an application under Order 21 Rule 32 of the Code of Civil Procedure. The said application was decided by the learned Executing Court on 1.10.1999 wherein it was found that the case of the Decree Holder was approved for the appointment on the post of Clerk and the appointment of the Decree Holder was also recommended by the Director, Local Bodies vide letter dated 30.7.1996. In

view of the said fact, the stand of the Judgment Debtor that the plaintiff did not appear in the type test is not tenable and, therefore, the Judgment Debtor was directed to reconsider the claim of the Decree Holder in view of the previous resolutions. Since the Decree Holder was still not promoted, the bank account of the petitioner was attached for non compliance of the order dated 1.10.1999 passed by the learned Executing Court. An application for releasing the bank accounts from attachment was declined by the learned Executing Court which is subject matter of challenge in the present revision petition.

Before the learned Executing Court, the Municipal Council took a stand that it passed a resolution on 30.8.1999 to consider the case of the Decree Holder and other employees. A Sub Committee was constituted to consider the claim of the Decree Holder . As per the decision of the Sub Committee on 15.5.2000, the Decree Holder was required to take the type test. Since the Decree Holder refused to take the type test, so she was not considered for promotion to the post of Clerk. It is further stated that three persons senior to the Decree Holder appeared in the type test and two of them have cleared the type test and thus, the decree has been complied with.

The Court found that the claim of the Decree Holder has to be considered at the time of filing of the suit. On 15.7.1996, the Municipal Council passed a Resolution considering the Decree Holder to be eligible for promotion. In the said resolution, the approval of the Director of Local Government was resolved to be obtained and such approval was granted by the Director, Local Bodies on 30.9.1996, therefore, the Decree Holder is entitled to be promoted.

As per the Government instructions 10% of the posts of Clerks are required to be filled up by promotion from amongst the eligible Class IV category employees. Such instructions dated 24.7.1983 also contemplates that the candidate is required to qualify the type test as prescribed by the Subordinate Services Selection Board. In terms of such instructions, the Municipal Council passed a resolution to promote the Class IV category employees to the post of Clerk in the year 1996. As per the stand of the Decree Holder , the employees at serial Nos.1 to 12 were under matric and thus, not eligible for promotion and the candidates at serial Nos.13 to 19 were not eligible because they did not fulfill the condition of qualifying the type test.

The Municipal Council passed a resolution for permitting 8 candidates including the Decree Holder, junior most in the category. But 5 candidates senior to the Decree Holder were promoted in the year 1996 with the approval of the Deputy Commissioner. Such candidates were reverted since they have failed to clear the type test.

It is pointed out that by the Decree Holder that the Municipal Council has resolved to promote the Decree Holder to the post of Clerk-cum-typist. Such resolution was approved by the Director as well, but still the Decree Holder was not promoted. It is pointed out that the persons, who were earlier reverted after promotion to the post of Clerk, cannot be promoted in terms of the decree passed as the relevant date of consideration of her case for promotion is when the post under 10% quota has fallen vacant. Since none of the senior to the Decree Holder was eligible when the post under 10% quota had fallen vacant, therefore, the Decree Holder

alone is entitled to be promoted as Clerk. Since such direction of the Civil Court has not been complied with, therefore, the order passed by the learned Executing Court cannot be said to be suffering from any illegality.

As per the undisputed facts on record, the name of the Decree Holder appears at serial No.20 of the Class IV category employees. Candidates at serial Nos.1 to 12 are not eligible, whereas the candidates at serial Nos.13 to 19 have not cleared the type test for which such persons were reverted in the year 1998. But the fact remains that vide resolution No.566 dated 29.5.2000, three persons senior to the Decree Holder , namely Rajiv Kumar, Ashok Kumar and Gansham Dass were promoted. Two of them have cleared the type test as well. Therefore, it is alleged by the petitioner that there is no post available amongst 10% of Class-IV category employees for promotion to the post of Clerk.

The sole argument raised by learned counsel for the respondent is that the claim of the Decree Holder has to be considered with reference of the date of availability of the vacancies i.e. at any time prior to 27.3.1995 when she filed the suit in which a decree has been passed. Therefore, in the year 1995, she was the only candidate who is matriculate and has passed the type test and, therefore, required to be promoted.

The argument of the learned counsel for the respondent is not tenable. Mere availability of vacancy does not create any right in favour of the Decree Holder. It is open to the employer to fill up the post by promotion. Once a candidate senior to the Decree Holder is available who is matriculate and has also passed the type test, the Decree Holder cannot claim that she is entitled to be promoted at earlier point of time then her senior. Mere availability of the vacancy in the year 1995 or earlier than that

will not confer the right in the Decree Holder to seek promotion over and above her seniors.

Learned counsel for the respondent has argued that since the decree of the Civil Court is to consider the Decree Holder for promotion on the basis of seniority and eligibility with effect from the date when the post of Clerk under 10% quota had fallen vacant, therefore, the Municipal Council cannot be permitted to alter the terms of such decree. The decree passed by the learned Civil Court cannot be given effect in isolation. The decree passed has to be read in context of the rules for promotion which are applicable and rights of the employer to fill up the post. Therefore, mere availability of vacancy will not confer any legal or equitable right in favour of the respondent to seek promotion over and above her seniors.

Consequently, the order passed by the learned Executing Court suffers from patent illegality and irregularity and thus, is set aside being not sustainable in law. The present revision stands allowed accordingly.

18 -10-2007 **(HEMANT GUPTA)**
*mohinder **JUDGE**